IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1222 of 2009

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ASHA DEVI Wife of late Tuntun Choudhary Resident of Kumhrar chowk, Near Imli Tal , P.S. Agamkuan, Distt- Patna.

... ... Petitioner/s

Versus

THE STATE OF BIHAR

... ... Respondent/s

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with

CRIMINAL REVISION No. 197 of 2011

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AJAY KUMAR S/O Late Gurudeo Thakur R/O Village - Noorpur, Police Station Nath Nagar, District - Bhagalpur

... ... Petitioner/s

Versus

THE STATE OF BIHAR

... ... Respondent/s

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Appearance :

(In CRIMINAL REVISION No. 1222 of 2009)

For the Petitioner/s	:	Mr.Ajay Thakur, Advocate
		Mr.Ritwik Thakur,Advocate
		Ms.Vaishnavi Singh, Advocate
For the Respondent/s	:	Ms.Pushpa Sinha, APP

(In CRIMINAL REVISION No. 197 of 2011)

For the Petitioner/s	:	Mr.Dr. Manoj Kumar,Advocate
For the Respondent/s	:	Ms.Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

Date : 01-08-2025

Heard learned counsel for the petitioners and learned APP for the State.

2. Petitioners through aforesaid applications prays for setting aside order dated 02.05.2009 passed by learned 1st Additional District and Sessions Judge, Munger in Cr. Appeal No. 67/2005 and order dated 13.12.2010 passed by learned Additional District and Sessions Judge 2nd , Munger in Cr. Appeal No. 65/2005 whereby and whereunder the learned Appellate court has been pleased to dismiss the appeals filed by the petitioners/convict against the judgment/order dated 08.06.2005 passed by the learned Chief Judicial Magistrate, Munger in G.R. Case No. 49/2000/G.R.P. arising out of Jamalpur P.S. Case No. 15 of 2000, registered for the offences under Sections 409/34 and 120B/34 of the Indian Penal Code, by which the learned court has been pleased to convict the petitioners under Sections 409 and 120(B) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 5 years and a fine of Rs. 3,000/- and in default of payment of fine to further undergo imprisonment for additional four months.

Facts

3. As per the prosecution story, Sri Mohan Kant Ghosal, Divisional Cashier, Eastern Railway, Maladah, filed a report alleging that on 08.07.2000, Rs. 46.85 lakhs were remitted to Jamalpur by railway staff including Tuntun Choudhary (since

deceased) and Ajay Kumar (petitioners) . The money was stored in the Jamalpur Sub Pay Office and sealed. However, on 09.07.2000, Senior Cashier Subhojeet Dutta accessed the office and later falsely claimed Rs. 45 lakhs were missing. An inquiry revealed Rs. 25 lakhs were misappropriated by Dutta, who confessed in writing and promised to repay the amount in three installments. The informant further stated that cash and records mentioned by Dutta were verified and after verification a shortage of Rs. 25,17,651/- was found in the cash of Senior Cashier-I, Jamalapur, Sri Subhojeet Dutta.

4. The prosecution in support of its case examined altogether 16 witnesses namely- P.W. 1 (Md. Naimuddin), RPF constable, PW-2 Anil Kumar Mandal RPF Constable, PW-3 Maheshwar Singh, Inspector R.P.F. Jamalpur, PW-4 S.K. Sutradhar, Station Manager, PW-5 Md. Javed Majhar, D.A.O. Malda Division, PW-6 S.K. Majumdar, Accounts Officer, PW-7 Shyam Lal, Asst. Commandant, R.P.F., Jamalpur, PW-8 Gulam Rasul, R.P.F. Constable, PW-9 Ram Rekha Singh, Constable, PW-10 Dilip Kumar Singh, Head Constable, R.P.F., PW-11 Pramod Kumar Ghosh, J.E. Engineer, Barharwa, PW-13 Adhir Kumar Tiggi, Head Constable at Jamalpur, R.P.F., PW-14 Sudama Ram, Constable R.P.F., PW-15 Jogindra Kumar Singh, Officer I/C Rly.

P.S. Jamalpur and PW-16 is Manoj Kumar Ghosh, Chief Cashier E.Rly. H.Q. at Kolkata and the prosecution also exhibited document from Exhibit 1-9.

5. **Following documents have been filed and proved by the prosecution:-**

(a) **Ext. 1**- Signatures of Subhojit Dutta and the witnesses in whose presence he confessed his guilt

(b) **Ext. 2**- Fax message by which Subhojit Dutta informed Malda Division that he received 25 lakhs on the remittance sent by S.R.D.C. by Farakka Express.

(c) **Ext. 3**- Booking register which shows that 08.07.2000, Tuntun Choudhary, Junior Cashier of that office was on duty to Jamalpur.

(d) **Ext. 4**- Writing and signature of M.K. Ghosal on receipt register.

(e) **Ext. 5**- Entries in cash book.

(f) **Ext. 6** - The writing and signature of M.K. Ghosal and the informant of this case on the written report.

(g) **Ext. 7**- Copies of challan being in pen and signature of Sri Dillip Kumar,Senior Divisional Cashier Malda upon which there is signature of cashier Tuntun Choudhary who had received the cash.

(h) **Ext. 8-** Entries of Sl. No. 289 of sealed register being in pen and signature of accused Subhojit Dutta which the then cashier of Jamalpur Pay Office.

(i) **Ext. 8/1-** Signature of witness upon the sealed register.

(j) **Ext. 9-** Entry in pay office diary dated 09.07.2000 in the pen and the signature of Subhojit Dutta which shows that accused has entered into the pay office on 09.07.2000 at 12:05 hours and has come back at 12-10 hours.

6. **Defence witnesses**

On behalf of defence, four witnesses have been examined. They are D.W.1- Arti Dutta (mother of accused Subhojit Dutta), D.W.2- Praveer Kr. Haldhar, examined on behalf of accused Rama Shanker Singh, D.W.3- Jai Shanker Tiwari, examined on behalf of accused Tuntun Choudhary, D.W.4- Ranjula Sharma, examined on behalf of Ajay Kumar.

Submissions on behalf of the petitioners

7. Mr. Ajay Thakur, learned counsel appearing on behalf of the petitioner, Tuntun Choudhary (since deceased) submits that in view of the fact that money was entrusted to Subhojit Dutta and the cash boxes were deposited by Ajay Kumar with their lock and seal intact, no liability can be fixed of any criminal act upon the

petitioner. Moreover, the co-accused, Subhojit Dutta, accepted his guilt in writing before the Committee, and such acknowledgment was even proved during the course of trial. The witnesses have categorically stated that during the entire route from Malda to Jamalpur, till the time it was kept in the safe, there was no pilferage and the money was intact. It has been further submitted by the learned counsel that even as per the entire prosecution case, the property in question was entrusted to the petitioner for very limited purpose, that is, to carry it from Malda to Jamalpur sub-pay office along with R.P.F. personnel, i.e. P.W.1, P.W. 2 and P.W. 3, as well as co-accused Ajay Kumar and Ram Shanker Singh. It is also an admitted fact that the entire amount which was received from Malda reached the sub-pay office, Jamalpur, and after keeping the said amount in the sub-pay office, the office was again locked, and thus, the post which was made over to the petitioner was already discharged, and whatever misappropriation has been done was done after the boxes were handed over in a locked and sealed position. Learned counsel thus submits that even if the entire prosecution material is taken to be true for the sake of argument, no charge under Section 409 of the I.P.C. can be made against the petitioner. From perusal of the evidences, laid down on behalf of the prosecution, there is nothing to prove that the petitioners have connived with the accused Subhojit Dutta, and hence, the framing of charge under Section 120(B) of the I.P.C. was also not correct, nor was his conviction under such section. Learned counsel points out that none of the learned courts below has even mentioned the materials for holding them guilty under Section 120(B) of the I.P.C. Learned counsel lastly submits that the petitioner, Tuntun Choudhary (since deceased) had no concern with the other accused person, as it was just a chance that on that day, higher officers at Malda had asked the staff of the sub-pay office, Jamalpur, and the escorting party from Jamalpur to carry the boxes to the Jamalpur sub-pay office. Thus, it has been submitted by the learned counsel for the petitioner, Tuntun Choudhary (since deceased) that the conviction and sentence under Sections 409, 120(B) of the I.P.C. are wholly illegal and fit to be set aside.

8. Learned counsel appearing on behalf of petitioner-Ajay Kumar has endorsed the argument forwarded by the learned counsel for the petitioner, Tuntun Choudhary (since deceased), and he goes on to add that the copies of the challan have not been brought on record, causing serious prejudice to the case of the petitioner, and due to the latches on the part of the prosecution, the petitioner, namely, Ajay Kumar, cannot be held guilty. Learned

counsel for the petitioner, Ajay Kumar, further submits that the learned Appellate Court has disposed of the appeal without hearing for the cancellation of the R.I. and default payment of fine of the appellant and even without appointing any amicus curiae to represent the appellant, and on such grounds, the order of the appellate court is completely illegal and is fit to be set aside. Learned counsel lastly submits that from the evidence which has been brought on record, it would be clear that the petitioner, along with Ram Shanker Singh, had kept the boxes in the sub- pay office in a locked and sealed condition, and on the subsequent date none of the cash staff had come on duty, and therefore, no receipt was granted. Learned counsel for the petitioner, Ajay Kumar, submits that merely not taking of the receipt from an officer at the sub- pay office on account of the fact that it was almost midnight when the train had arrived and none of the officers were present in the sub-pay office, the petitioner cannot be saddled with the guilt of theft of money, especially when the co-accused, Subhojit Dutta, has accepted his guilt in writing, and the same has also been proved during the course of trial. Lastly, it has been submitted that if the co-accused, Ram Shanker Singh, has been found to be not guilty, there is no occasion for the petitioner to be held liable for any act of theft, as it was the petitioner and the said Ram Shanker Singh who had jointly gone and kept the cash boxes in the sub- pay office and locked the same, and thereafter did not return until the theft was reported. Learned counsel thus submits that the order of conviction and sentence as well as learned Appellate Court's order is not tenable in law and is fit to be set aside.

Submissions on behalf of the State

9. Learned Additional Public Prosecutor for the State has vehemently opposed the revision application filed by the aforesaid petitioners and has stated that, on the basis of evidences available on record, it is clear that both the peons namely, Ajay Kumar and Ram Shanker Singh, had reached the sub- pay office along with the money and the same was kept in the sub- pay office in the presence of the prosecution witnesses nos. 10, 13 and 14 who have disclosed that the boxes were kept by the petitioner and one another, but the petitioner did not agree to hand over the remittance amount to the respective cashier nor did they have the amount checked and verified. It has been submitted by learned A.P.P. for the State that the statement of the defence witnesses cannot be relied upon as they are highly interested witnesses, and thereafter, the story propounded by the wife of the petitioner namely, Ranjula Sharma, that she had handed over the keys to the

co-convict, Subhojit Dutta, was a mere sweetening statement and, thus, cannot be relied upon.

10. Learned A.P.P. for the State, thus submits that from entire facts and circumstances of the case, evidences both oral as well as documentary available on record, the prosecution has proved the charges levelled against the petitioners, especially the fact that the petitioner Ajay Kumar and Tuntun Choudhary (since deceased) both were hand in gloves with the co-accused, Subhojit Dutta, and therefore, their conviction and subsequent sentence for the offence under Sections 409 and 120(B) of the I.P.C. is legal and does not need any interference.

11. In order to appreciate the submissions made by the learned counsels for the respective parties, the evidences of the witnesses are discussed in brief as under:

12. **Statement of the prosecution witnesses:-**

(a) **P.W. 1** (Md. Naimuddin), RPF constable-Member of the escort party, stated on oath that along with Anil Kumar Mandal and Gulam Rasool, he went to Malda to escort the remittance on 08.07.2000 at about 10:00 hours. They were asked by Senior D.C. Office at 04:00 P.M., they found that Jamalpur sub-pay office staff Ajay Kumar, Rama Shanker Singh were also present but no cashier form Jamalpur was there. He stated that he witnessed Ajay Kumar, Rama Shanker Singh and Tuntun Choudhary received the cash at Senior D.C. Office, Malda, kept the same in two boxes and locked and sealed the boxes. Constables of R.P.F., including the witnesses describes that Tuntun Choudhary, Ajay Kumar and Rama Shankar Singh who brought the cash boxes to Jamalpur by Farakka Express. They reached Jamalpur at about 2:10 A.M. on 8/9.7.2000. All members except Tuntun Choudhary came down from train with cash box and the box was brought to sub-pay office, Jamalpur.

(b) Similar is the evidence of other two constables who are **P.W. 2** and **P.W. 8**

(c) **P.W. 3**- Sri Maheshwar Singh, Inspector I/C R.P.F. work shop Jamalpur, stated in his evidence that he was responsible to provide security to sub-pay office Jamalpur and had deputed three R.P.F. constables (P.W.1, P.W.2 and P.W.8) to bring the remittance from Malda to sub-pay office, Jamalpur. According to this witness, constable deputed by him escorted the cash from Malda to sub-pay office Jamalpur on 10-7-2000. He came to know that there was shortage of some amount according to this witness at 11.00 A.M. on 10-7-2000. According to this witness at the request of cashier Subhojit

Dutta, he had arranged escort party but Subhojit Dutta himself did not go to Malda to bring the cash. Rather the cash peon Ramashanker Singh and Ajay Kumar and three R.P.F. constables had gone to Malda to bring the cash. He then states that one cashier Tuntun Choudhary was deputed/booked from Malda office to bring the cash at Jamalpur sub-pay office. The cash was brought to cash office by cash peon Ramashanker Singh, Ajay Kumar and three constables where the cashier Tuntun Choudhary proceeded to his house at Gulzarbagh by same Farakka express. Then, the cash amounting to Rs. 46.85 lakhs was brought from Malda to Jamalpur but on 10-7-2000 the accused Sub-pay office cashier had reported Malda Division Office that there was shortage of Rs. 250000/- in the cash remittance box. This report and enquiry came from Malda on 11-7-2000 at Sub-pay Office, Jamalpur.

(d) **P.W. 4**- Mr. S.K. Sutradhar, the then Station Manager, Jamalpur, stated that on 11-7-2000 he was summoned by the D.A.O. and A.D.A.O. Malda and Asst. Security Commissioner R.P.F. who were conducting departmental enquiry regarding the mis-appropriation of money. He said that accused Subhojit Dutta gave written undertaking in his presence that he had defalcated Rs.25 lakhs which shall be refunded in three equal installments.

(e) **P.W. 5**- Javed Majhar, D.A.O. Malda Division, stated in his evidence that at relevant time he was posted as D.A.O. Malda Division and on that day i.e. on 10-7-2000 he got telephonic information from Jamalpur Sub-pay Office that there is shortage of Rs. 250000/- in the cash remittance from Malda. Under questioning, accused Subhojit Dutta confessed to the misappropriation and provided written undertakings in both English and Bengali versions, agreeing to repay the embezzled amount of Rs. 25 lakhs in three equal installments.

(f) **P.W.6**- S.K. Majumdar, A.D.O. Malda Division, stated that on 10-7-2000 Sri M.K.Ghosal, D.G. Incharge, Malda received a telephonic message from the accused Subhojit Dutta that there is shortage of Rs. 2500000/- remittance sent to him. Then Sri M.K.Ghosal informed this fact to this witness and in his presence Subhojit Dutta was asked by Sri Ghosal that the fact of shortage of 2500000/- be faxed to him after receiving the fax message from Subhojit Dutta.

(g) **<u>P.W. 7</u>**- Sri Shyal Lal, Assistant Security Commissioner R.P.F., a member of the D.R.M. Committee conducting departmental enquiry. He testified that a shortage of Rs. 25,17,735.79 was detected in section VI under accused Subhojit Dutta's charge. Subhojit Dutta confessed in writing and gave an undertaking to repay the amount. The accused told him he had given Rs. 25,00,000/- to his men through the distribution window. However, Rs. 9,25,000/- brought by Rama Shanker Singh and P.K. Haldhar was found intact with no shortage.

(h) **<u>P.W. 9</u>**- Ram Rekha Singh, was on guard duty at Sub-pay Office, Jamalpur from 12:00 to 2:00 hours on the alleged date. He testified that accused Subhojit Dutta entered the office at about 12:05 hours carrying a bag and stayed for half an hour, but falsely recorded only five minutes in the diary. PW9 identified entry no. 289 in the sealed register as being in Subhojit Dutta's handwriting and signature, proving his presence during the critical period.

(i) **<u>P.W. 10</u>**- Dilip Kumar Das, Head Constable R.P.F. was on night duty at sub-pay office on 9-7-2000 from 2:00-4:00 hours. He testified that Rama Shanker Singh and Ajay Kumar with three R.P.F. escort members arrived at 2:15 hours, opened the office gate, stayed inside for 15-20 minutes, then left after locking the office.

(j) **P.W. 13** and **P.W. 14** were also the R.P.F. constable posted at the sub-pay office. They have stated that cash remittance was brought by Ajay Kumar and Rama Shanker Singh. They kept it inside the sub-pay office.

(k) **P.W. 15**- Sri Jogindra Kr. Singh, Investigating Officer who registered the case and inspected the pay office at Jamalpur Railway station. The office has two rooms with R.P.F. constables in the outer room and pay office in the inner room, separated by an iron gate. During investigation, he found all locks, boxes and windows intact with no signs of break-in. He recorded witness statements and discovered a shortage of Rs. 25,17,735.79 from section I under Subhojit Dutta and Ajay Kumar's charge, but no shortage in section VI under Praveer Haldhar and Rama Shanker Singh's charge. During the course of the investigation, Subhojit Dutta disclosed that he had misappropriated the money.

(l) **P.W. 16**- Manoj Kumar Ghosh, Chief Cashier, Eastern Railway) received information on 10-7-2000 about Rs. 25 lakhs defalcation at Jamalpur sub-pay office and was a member of the D.R.M. Malda enquiry committee.

During enquiry, he found Rs. 46.85 lakh was remitted from Malda to Jamalpur, but Rs. 25,17,735.79 from sub-pay office-I had been defalcated. He proved his signature on the three-page enquiry report (marked as ext.-14) along with signatures of D.A.O. Javed Majhar and Asst. R.P.F. Commissioner Shyam Lal.

13. **Statement of Defence Witnesses:-**

(a) **D.W.1 Arti Dutta** (mother of accused Subhojit Dutta): She testified that Subhojit Dutta had come to Calcutta to see his ailing son and returned from there in the evening of 9-7-2000. Her witness statement provided a prescription from a doctor regarding treatment.

(b) **D.W.2 Praveer Kr. Haldhar**: Examined on behalf of accused Rama Shanker Singh. This witness was the senior cashier of section VI of Sub-pay Office, Jamalpur on 11-7-2000. He stated that accused Ram Shanker Singh had brought Rs. 9,25,000/- cash of section VI which was found intact and he had received the same. This D.W.2 gave a clean chit to the accused Rama Shanker Singh.

(c) **D.W. 3 Jai Shanker Tiwari**: Examined on behalf of accused Tuntun Choudhary. He stated that he had worked with accused Tuntun Choudhary for about 3-4 years but had not found any complaint against him.

(d) **D.W. 4 Ranjula Sharma**: Examined on behalf of Ajay Kumar. She stated that she had given the key of pay office, Jamalpur to accused Subhojit Dutta in absence of her husband, which goes to show that the key of Sub-pay office was with the accused Ajay Kumar which was given to the accused Subhojit Dutta on 9-7-2000 which was a holiday (Sunday).

14. On careful analysis of the evidences as discussed above, there are few factual aspects which is un-controverted. It is constant case of the prosecution that Tuntun Choudhary, Ajay Kumar and Rama Shanker Singh brought the cash boxes from Malda to Jamalpur by Farakka Express. They came at Jamalpur railway station at 2:10 hours in the night of 8/9-7-2000. It is also the case of the prosecution supported by P.W.-1, P.W.-2 and P.W.-8 the constables of R.P.F., who were the members of the escot party that peon- Rama Shanker Singh and Ajay Kumar came down from the train at Jamalpur Station whereas Tuntun Choudhary proceeded with the same train. The witnesses have been consistent with regard to the fact that the boxes were intact till the time they were brought down from the train and taken to the sub-pay office and Rama Shanker Singh gave certificate to the R.P.F. constable

with regard to the keeping of the boxes. The said witnesses have also stated that during the course of travelling no disturbance was caused to both the boxes meaning thereby remittance of Jamalpur sub-pay office had been brought from Malda to Jamalpur sub-pay office in two separate boxes in an intact position.

15. From the evidence of P.Ws. 10, 13 and 14 it would be evident that on 09.07.2000 i.e. on Sunday (holiday) the co-accused Subhojit Dutta came to the sub-pay office at Jamalpur at about 12 noon in presence of P.W.9, Ram Rekha Singh, a constable. The said co-accused after making relevant entries in the register found exhibits 8, 8/1 and exhibit 9 and after staying for few minutes he came out of the office and on 10.07.2000 the accused Subhojit Dutta came to the office and gave telephonic message and also message through fax to Malda office that around Rs. 25 lakhs out of 46.85 lakhs is missing.

16. From the perusal of the evidence of the DW-2, Praveer Kumar Haldar, it would be clear that the money brought by peon Rama Shanker Singh an accused was intact and on verification the cash was found in the cash office, and he has received the same. D.W.- 4 Ranjula Sharma who is wife of Ajay Kumar, in her evidence pointed out that the co accused Subhojit Dutta in absence of her husband, had came to her house asking for

the keys of sub-pay office, Jamalpur which was given to him on 9-7- 2000. From the perusal of the evidence of the P.Ws., it would be evident that the cash boxes were kept at the sub-pay office, Jamalpur, in intact position, and the keys of this sub-pay office was taken by the Subhojit Dutta and it was he alone who was found to have entered the Sub-pay office on a holiday which is also supported by the evidence of D.W.4.

17. Having discussed the evidences of the prosecution as well as the defence, this Court now proceeds ahead to analyze the judgment of the learned Trial Court. The learned Trial Court had dealt with the evidences of prosecution as well as the defence witnesses and has also considered the objections raised by the defence that no proper sanction was taken before taking cognizance against the petitioners who were admittedly employees of the railway and hence the sanction under Section 197 Cr.P.C. was imperative before the proceeding ahead against the petitioners. Learned Trial Court had also adjudicated the point of challenge of references of the trial before the learned Chief Judicial Magistrate, Munger under the provisions of Section 325 of the Cr.P.C. for enhanced punishment to the three accused persons namely Subhojit Dutta, Tuntun Choudhary and Ajay Kumar.

18. The learned Trial Court starting with the evidence of the prosecution as well as the defence witnesses has held that the peon Ajay Kumar and Rama Shanker Singh reached the sub-pay office, Jamalpur along with cash, however, Tuntun Choudhary continued his traveling and the other two remained back and handed over the cash boxes to the cashier in the sub-pay office, Jamalpur. Learned Trial Court has pointed out that the accused Tuntun Choudhary did not take pain to get down from the train at Jamalpur and he went to Patna by the same train without obtaining receipt of handing over of the money to the cashier at Jamalpur and leaving remittance amount at the mercy of Ajay Kumar and Rama Shanker Singh and therefore, he was negligent to his duty.

19. Learned Trial Court on the point of reference of the trial before him for enhanced punishment has held that in the present case the referring Magistrate was of the opinion that guilt of all the accused persons have been proved and he had observed that on charge of misappropriation of huge amount of government money amounting to Rs. 25,17,735.79 has been found established against accused Subhojit Dutta, Ajay Kumar, Tuntun Choudhary came to the opinion that "*all the three accused persons namely Subhojit Dutta, Ajay Kumar, Tuntun Choudhary deserve more*

severe punishment different from that which he can inflict or more severe than he can inflict."

20. The learned Trial Court thereafter said that there was no illegality in the reference of the trial before the learned C.J.M. The learned Trial Court then went on to answer the objections with regard to the point of sanction and has recorded his finding that "*from perusal of the record I find that in this particular facts and circumstances of the case in which huge amount of government money was misappropriated. Accused persons are not immuned their imposition from prosecution without sanction. This maxim extends only to act which can be shown to be done in discharge of duty. Criminal breach of trust by the accused persons does not come within the purview of their official duty...*" Therefore, the question of any sanction under Section 197 of Cr.P.C. would not arise.

21. The learned Trial Court after referring to the evidences went on to hold that the accused Subhojit Dutta in conspiracy and with the connivance of Ajay Kumar and Tuntun Choudhary has defalcated government money and held Subhojit Dutta guilty under Section 409 of I.P.C.and under Section 409/120(B) of the I.P.C. against accused Ajay Kumar, Tuntun Choudhary, petitioners herein.

22. Learned Appellate Courts have considered the elaborate dealing of the oral and documentary evidence produced on behalf of the prosecution before the learned Trial Court and have gone on to hold that the prosecution has established the charges beyond all shadows of reasonable doubt by oral and documentary evidence establishing that the appellant had misappropriated the said amount in collusion with other accused persons and therefore, he held that there was no reasonable ground to interfere with the judgment of conviction and the order of sentence passed by learned Magistrate and thereby dismissed the appeals preferred by the petitioners herein.

23. This Court after having elaborately discussed the evidences of the prosecution as well as the defence witnesses and after analyzing the finding of the learned trial court as well as appellate courts, finds that so far as the accused Ajay Kumar and Tuntun Choudhary (since deceased) are concerned it is an admitted fact that they had come along with the cash boxes together along with one Rama Shanker Singh. It is also an admitted fact that the accused/petitioner Tuntun Choudhary (since deceased) proceeded to Patna after leaving the boxes with Ajay Kumar and Rama Shanker Singh and therefore, it is no doubt a case where the cash could have been misappropriated by the said Tuntun Choudhary.

This Court also finds that the boxes were deposited with the cashier at sub-pay office, Jamalpur, by Ajay Kumar and Rama Shanker Singh. When the same was submitted at the sub-pay office, the boxes were found to be intact. Therefore, there is no reasoning that if Rama Shanker Singh could have been acquitted on the same set of evidence, it does not stand to reason why the petitioner-Ajay Kumar could not have been acquitted.

24. It is also an admitted fact that the other co-accused, namely Subhojit Dutta, had visited the sub-pay office on holiday and stayed there for some time. Thereafter, on the next date, he himself had alleged that Rs. 25 lakhs was missing. Thus, from the perusal of the evidence, it does not establish as to what was the occasion for the visit of Subhojit Dutta on next day, which indicates clearly that the cash could have been withdrawn when the petitioners Ajay Kumar as well as Tuntun Choudhary (since deceased) were not admittedly present on the subsequent date. We have already seen and observed that the cash boxes were deposited at the sub-pay office in an intact position.

25. Thus, from the perusal of the statement of the witnesses, one fact is certain that the boxes were brought to Jamalpur in a locked and sealed position and submitted to the cashier of Jamalpur sub-pay office, and no complaint with regard

to any broken seal was made. Another admitted position is that the petitioner Tuntun Choudhary (since deceased) had proceeded ahead to Patna by the same train and third and most important, the petitioner Ajay Kumar, after submitting the locked and sealed cash boxes which was kept in the sub-pay office, did not turn thereafter to the said office. In view of such admitted facts, it is clear that the petitioners could not have been saddled with the allegations of loss of the said amount, there being no iota of evidence brought by the prosecution in order to establish that the petitioners were in connivance with the main accused Subhojit Dutta. This Court has also taken note of the Exhibit-1 series, which are the signatures of Subhojit Dutta and the witnesses in whose presence he confessed his guilt and accepted that he had misappropriated the amount of Rs. 25 lakhs and he promised to pay the defalcated amount in three installments. The deposition of P.W.-7, Sri Shyam Lal, Assistant Security Commissioner, R.P.F., who was also a member of the D.R.M. Committee constituted for holding departmental inquiry, reveals that shortage of Rs. 25,17,735.79 was detected in the cash of Section VI, which was in charge of accused Subhojit Dutta, Senior Cashier of sub-pay office, Jamalpur. Even he has deposed that Subhojit Dutta had confessed in writing regarding defalcation and executed an undertaking to repay the same.

Consideration

26. In light of such oral and documentary evidence adduced on behalf of the prosecution and also taking into account the defence evidence, this Court finds that the prosecution has not been able to prove the guilt of the petitioners beyond reasonable doubt, and it was only on suspicion that the petitioners have been named, which could not be proved by the prosecution through the evidence. Thus, having regard to the facts and circumstances of this case, this Court is of the view that the prosecution has not been able to prove the conspiracy angle between the petitioners Ajay Kumar and Tuntun Choudhary (since deceased) with Subhojit Dutta in defalcating the said amount. Therefore, the impugned order dated 02.05.2009 passed by the learned 1st Additional District and Sessions Judge, Munger, in Cr. Appeal No. 67/2005 and order dated 13.12.2010 passed by the learned Additional District and Sessions Judge, 2nd, Munger, in Cr. Appeal No. 65/2005, as well as the judgment and order dated 08.06.2005 passed by the learned Chief Judicial Magistrate, Munger, in G.R. Case No. 49/2000/C.R.P., arising out of Jamalpur

P.S. Case No. 15 of 2000, is set aside. The order of payment of fine of Rs. 3,000/- is also set aside.

27. Both the revision applications, referred to above, stand allowed.

(Sourendra Pandey, J)

Tusharika/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	